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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/806,410

03/23/2004

Wendy Zellen

1358-11

2308

58388

7590

03/07/2008

GOWAN INTELLECTUAL PROPERTY
1075 NORTH SERVICE ROAD WEST
SUITE 203
OAKVILLE, ON L6M-2G2
CANADA

EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/07/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	Application No. 10/806,410	Applicant(s) ZELLEN ET AL.	
	Examiner Lien T. Tran	Art Unit 1794	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 February 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: none.
 Claim(s) objected to: none.
 Claim(s) rejected: 11, 12, 17 and 18.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
 13. ☐ Other: _____.

/Lien T Tran/
Primary Examiner, Art Unit 1794

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's argument is not persuasive for reason of record. Additionally, applicant argues that the oils disclosed by Kincs have such low melting point that they are not capable of solidification at the temperature range disclosed by Kincs; thus, it must be concluded that Kincs must have used at least partially hydrogenated oil. This argument is not supported by factual evidence and it is contrary to the disclosure of Kincs. While Kincs discloses the oil is typically partially hydrogenated oil, there is no disclosure that the oil is only hydrogenated oil. Applicant's attention is directed to claim 1 which only recites vegetable oil and not hydrogenated vegetable oil. The same disclosure is found on column 4 lines 13-15. While Kincs preferred embodiment might be hydrogenated oil, the disclosure is not limited to only hydrogenated oil. Furthermore, the oils are the same type of oil claimed and the temperature difference is not significant because Kincs discloses about 12.8 degree C which means the temperature can vary from this point and can be lower to not be patentably significant from the 5 degree C as claimed. Furthermore, Kincs discloses the temperature is not restricted to the range claimed and can vary depending upon the vegetable oil being processed, the type of device and the type of equipment downstream of it. With regard to applicant's comment about the use of ice water. The examiner maintains her position that the teaching of the baking book to use cold water would readily suggest to one skilled in the art to use ice water because it is readily apparent that there are two ways to make cold water; one is to refrigerate the water and the other way is to add ice to water. If refrigerated water is not readily available, then it would have been obvious to add ice to water. This variation would have been readily apparent to one skilled in the art, particularly in view of the fact that ice water is commonly used in making pie crust. A search from dialog is included with this action to show evidence of the well known fact that ice water is commonly used in making pie crust.